IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/04/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD.No.101 of 2004
and
C.M.P.No.588 of 2004

Sundari .. Petitioner

-Vs-

K.G.Sivasubramanian .. Respondent

This civil revision petition is preferred under Sec.115 of the Code of Civil Procedure against the fair and decretal order in I.A.No.36 of 2003 in O.S.No.100 of 1998 dated 7.2.2003 on the file of the District Munsif, Nilakottai.

!For Petitioner : Mr.A.Sivaji

^For Respondent : Mr.M.V.Venkataseshan

:ORDER

Challenging an order of the learned District Munsif, Nilakottai, made in I.A.No.36 of 2003 in a pending suit for permanent injunction in O.S.No.100 of 1998, this revision has been brought forth by the plaintiff, the revision petitioner herein.
2. This Court has heard the learned Counsel for the petitioner and also the learned Counsel for the respondent, who appeared on notice.
3. This Court is of the considered view that in order to avoid the avoidable delay, this revision has got to be disposed of and not to be kept pending on admission.
4. Admittedly, two suits namely O.S.Nos.100/98 and 3 of 2002, were taken up for trial jointly by the lower Court on the direction of this Court. It is also further admitted that the plaintiff's evidence in O.S.100/98 was over, and the respondent/defendant was examined as D.W.1, during which the instant application was filed by the respondent herein seeking to add an additional issue "whether the plaintiff is the daughter of late Subramaniya Pillai and Avadaiammal?". The application was resisted by the petitioner/plaintiff. The lower Court took up the matter for enquiry and allowed the application ordering for the additional issue to be framed and added along with the original issues already on record. This Court is unable to see any reason to sustain the order, since the infirmity is quite evident.
5. It was a suit for permanent injunction simplicitor filed by the

petitioner/plaintiff stating that she is in lawful possession of the property, and hence, it should not be interfered with. The suit was resisted by the respondent/defendant. Hence, the only question that would arise for consideration in a suit for permanent injunction like the instant one, is whether the plaintiff has proved the lawful possession and her possession is to be protected. The application has also been brought forth at the time after the evidence of the plaintiff's side was over, and the defendant was also being cross-examined. The issue that was sought to be raised was whether the plaintiff was the daughter of one Subramaniya Pillai and Avadaiammal. Needless to say that in a case, where the plaintiff made a declaration that she was the daughter of A.Subramania Pillai, the additional issue now sought to be added was outside the scope of the suit, because that question would not at all arise for consideration.

6. Apart from the above, the learned District Munsif has also pointed out inter alia that the application has got to be allowed, since the suit was to be disposed of within a time frame, as per the directions of this Court. It cannot be a ground for allowing the application to add an issue, since it is quite patent that the issue now sought to be raised in the suit was outside the scope, which does not require any consideration. On the contrary, the trial Court is called upon to answer whether the plaintiff is entitled to the relief of permanent injunction by proving that she is in lawful possession of the property in question. Hence, without any hesitation whatsoever, the infirmity committed by the lower Court could be set right only by upsetting the order impugned. Accordingly, it is done.

7. Therefore, this civil revision petition is allowed, setting aside the order of the lower Court. I.A.No.36 of 2003 is dismissed. The lower Court is directed to further proceed with the matter and dispose it of within a period of two months herefrom. No costs. Consequently, connected CMP is closed.

Index: yes
Internet: yes

To:

The District Munsif
Nilakottai

nsv/